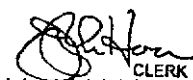


FILED

FEB - 5 2007


CLERKUNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CIV 06-4186

Plaintiff,

vs.

MEMORANDUM OPINION
AND ORDER

JOHN ODESAS KITSOPOULOUS,

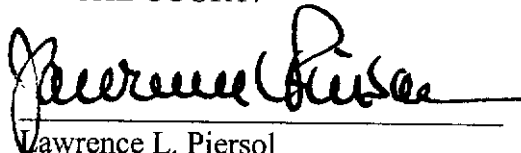
Defendant.

Pending before the Court is Plaintiff's Application for Entry of Default, Doc. 5, which was filed on November 6, 2006. Defendant filed an Affidavit on November 22, 2006, stating he was not aware he was allowed to answer the complaint, but after seeking legal advice he desires to answer the complaint and proceed on the merits. The Eighth Circuit recognizes that even in a situation where a default has been entered by the Clerk, "it is likely that a party who promptly attacks an entry of default, rather than waiting for grant of a default judgment, was guilty of an oversight and wishes to defend the case on the merits." *Johnson*, 140 F.3d at 784. In this case, Defendant did not wait until entry of default before informing the Court he wishes to defend the case on the merits. An Answer having been filed promptly after Plaintiff's application was filed, the Court will deny the application and enter a separate scheduling order. Accordingly,

IT IS ORDERED that Plaintiff's Application for Entry of Default, Doc. 5 is denied.

Dated this 4th day of February, 2007.

BY THE COURT:

Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Sharon Laro
DEPUTY